IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

Bail Appl..No. 7292 of 2007()

CR.61/07 OF EXCISE RANGE, TRIVANDRUM

: PETITIONER/ACCUSED

SHAMALA, D/O PONNAMMA,
AGED 56 YEARS, KALAMPETTA VEEDU,
MAKADUKADAVU, PERUMKAVU P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.T.A.UNNIKRISHNAN
SRI.K.SATHEESH KUMAR

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.V.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 29/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 7292 OF 2007

Dated this the 29th day of November, 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under the provisions of the Kerala Abkari Act. She was allegedly found to keep in her possession for sale 7 litres of IMFL when she was intercepted by the excise officials on 30.10.07. She was not arrested as there was no woman official in the party which detected the crime. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. In any view of the matter, her alleged statement that she was carrying the contraband article for the purpose of sale will not expose her to culpable liability under section 55(i) of the Kerala Abkari Act, submits the learned counsel.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the facts and circumstances clearly reveal that the possession by the

petitioner was for the purpose of sale. The quantity seized as also the statement made by the petitioner at the time of detection must eloquently convey that possession and storage by her was for sale and consequently she is not entitled to anticipatory bail.

4. I find merit in the opposition by the learned Public Prosecutor. I agree with the learned Public Prosecutor that this is a fit case where the petitioner must resort to the ordinary and normal course by appearing before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail. I find no features in this case which would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C.

5. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

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